

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN SECTION OF TENNESSEE  
WESTERN DIVISION**

**JOE NATHAN MACKLIN,**

**Plaintiff,**

**V.**

**Case No. 2:18-cv-02873-SHL-tmp**

**SHELBY COUNTY, TENNESSEE, a  
Tennessee municipality, *et al.*,**

### Defendants.

**JOINT MOTION TO STAY LITIGATION AND  
MEMORANDUM OF LAW IN SUPPORT THEREOF**

COME NOW the Plaintiff, Joe Nathan Macklin, and the Defendant, Shelby County, Tennessee (collectively the “Parties”), and moves this Court, pursuant to Federal Rule of Civil Procedure 6(b)(1)(A), to modify the Scheduling Order, (Doc. Nos. 48 and 75), and stay all litigation and applicable deadlines pending final approval of a settlement agreement. In support thereof, the Parties would state as follows:

## FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff initiated this § 1983 case by the filing of his Complaint on December 21, 2018. (Dkt. No. 1.) As relevant to this Motion, the Scheduling Order currently provides numerous deadlines for expert disclosures, designations and motions to exclude (Daubert Motions). (Doc Nos. 48 and 75). Additionally, the parties have noticed depositions for Steve Farris, Jerry Dorsey and Joe Macklin. Finally, the trial is scheduled to begin June 5, 2020.

On August 13, 2019, the Parties reached a potential settlement in this matter, and executed a “Mediation Settlement Memorandum of Agreement” (hereinafter “Agreement”)

between and amongst all remaining parties to this litigation. However, final approval and acceptance of the Agreement is subject to ratification by the Shelby County Commission. Accordingly, the Parties seek an indefinite stay of the pending litigation to allow the Agreement to be approved, accepted and ratified by the Shelby County Commission.

### **LEGAL ARGUMENT**

Federal Rule of Civil Procedure 16(b)(4) provides “[a] schedule may be modified only for good cause and with the judge’s consent.” *See also* Fed. R. Civ. P. 6(b)(1)(A) (allowing a court to extend time to act for good cause); Scheduling Order, Doc. 48, at p.4 (“Absent good cause shown, the deadlines set by this order will not be modified or extended.”). The primary consideration in determining if good cause exists is the moving party’s diligence in meeting the deadlines. *Inge v. Rock Fin. Corp.*, 281 F.3d 613, 625 (6th Cir. 2002) (citations omitted). Also relevant is whether an opposing party will be prejudiced by the amendment. *Id.*

Here, the Parties have been diligent in meeting deadlines in this case by conducting discovery and preparing for mediation. The Parties first met for mediation on August 7<sup>th</sup>. The Parties then reconvened for a second day of mediation on August 13<sup>th</sup>. On the second day of mediation, the Parties reached the Agreement which, if ratified, would provide for dismissal, with prejudice, of the remaining Defendants in this case. As this Motion is a joint motion, there is no prejudice to any “opposing party.” In light of the Parties efforts to settle this matter, the Agreement, and the pending approval by the Shelby County Commission of the Agreement, if this Motion is granted, all parties, and this Court, will save considerable resources by staying this litigation until the Agreement can be ratified.

### **CONCLUSION**

For the foregoing reasons, Plaintiff and Defendant submit there is good cause for staying

this litigation.

Respectfully submitted this 14<sup>th</sup> day of August, 2019.

Respectfully submitted,

BLACK MCLAREN, JONES, RYLAND & GRIFFEE  
a professional corporation

/s/ Brice Moffatt Timmons

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### **CERTIFICATE OF SERVICE**

A true and correct copy of the above and foregoing document has been served upon all counsel of record in this cause electronically through the Court's ECF filing system, on this the 14<sup>th</sup> day of August, 2019.

/s/ Brice Moffatt Timmons